IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 465 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARJIBHAI DARMSHI - Applicant(s)
Versus
STATE OF GUJARAT & 6 - Respondent(s)

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Appearance :
MR BN KESHWANI for Applicant(s) : 1,
MS.HANSA PUNANI, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR SHAKTISINH GOHIL for Respondent(s) : 2 - 7.

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 10/04/2006

ORAL JUDGMENT

The original complainant is before this Court being aggrieved of the judgement and order passed by the learned Special Judge (Atrocity) and Fast Track Court No.5, Bhavnagar in Special Case (Atrocity) No.24 of 2000

dated 5th April 2000. The learned Judge was pleased to acquit all the accused of the charges levelled against them under sections 323, 504, 395, 427 read with 114 of the Indian Penal Code and section 3(2)(5) of the Atrocities Act.

2. Short facts giving rise to the present proceedings are that on 25th December 1999 as alleged by the complainant, Harjibhai Dharamshibhai, at about 5.00 PM , he was present at the ration shop of his brother Bharatbhai Dharamshi. At that time accused no.1, i.e. Dhirajbhai Gopalbhai had come to take kerosene, but he did not have ration card with him. The complainant refused to give kerosene to him, and therefore, the accused got enraged and he started abusing the complainant and also gave fist and kick blows. It is also the case of the complainant that in the meantime, accused nos.2 to 6 also suddenly came and they also started abusing the complainant, pelting stones and caused damage to the shop and looted the cash box containing Rs.2700/-. While leaving the shop threatened the complainant of dire consequences.

3. The learned Judge has taken pains to consider the

oral evidence of the witnesses which included,

P.W. No.	Name	Exh. No.	Remarks
1	Dr.Pranavkumar Sinha	12	
2	Lavjibhai Bhikhabhai	15	Eye witness
3	Harijibhai Dharmshibhai	17	Complainant
4	Ratilal Kamjibhai	19	Eye witness
5	Bhupatbhai Kanjibhai	20	Panch witness - hostile
6	Premjibhai Dhudabhai	22	Panch witness
7	Bharatbhai Dharmshibhai	23	He is stated to be eye witness by Learned advocate Mr.Keshwani. But the deposition reveals that he reached the scene of occurrence only after he was informed while he was at his residence.
8	Nagarbhai Raghavbhai	24	Eye witness
9	Hasamkhan Jivankhan	25	Police Station Officer (PSO)
10	Arjanbhai Harsurbhai	28	PSI
11	Ramanbhai Shingabhai	36	Dy. S.P.

4. The learned Judge has also taken into consideration the documentary evidence, list of which is set out in para 3 of the judgement which included Medical Certificate (Exh.14), the complaint (Exh.18), Panchnama (Exh.21), etc. produced on record of the case.

5. Mr.Keshwani, the learned advocate for the petitioner

vehemently submitted that the Police Department was not cooperative, the incident was investigated by an officer as noted by the learned Judge, not authorised under the Prevention of Atrocities (Scheduled Castes and Scheduled Tribes) Act ("the Atrocities Act" for brevity).

The submission of Mr.Keshwani is not supported by the record. It is also falsified by deposition of Shri Ramanbhai Shingabhai, Dy. S.P., who is examined as PW 11, Exh.36. He has deposed that at the time of occurrence of the incident, he was serving as Deputy Superintendent of Police, Botad. On 25th December 1999 while he was on duty he received a wireless message, a copy of which is produced on the record of the case at Exh.35, assigning the investigation to him by DSP, Bhavnagar. He has further deposed that after he took over the investigation, he immediately rushed to the place of occurrence on 25th December 1999 itself. At 11.00 PM he started drawing Panchnama of the scene of occurrence and completed the same at 11.30 PM. From the deposition of a responsible officer of the rank of Deputy Supdt. Of Police, allegations made by Mr.Keshwani that investigation was not carried out by an authorised officer under the Atrocities Act stands falsified.

On the contrary, the vehemence with which allegations are levelled against the Police Department, and the motive behind the same to keep the village people under pressure stands explained by the observations of the learned Judge. The complainant is the brother of the licenceholder of the ration shop in the village, they had grievance against village people, who had complained against the licenceholder for non supply of essential commodities. It is also on record that on account of the complaint by the village people, the shop was ordered to be be closed for a period of one month and about 297 ration cards were transferred from this shop to some other shop. On appreciation of the evidence of the witnesses and the documentary evidence the learned Judge came to the conclusion that none of the offence is proved. The learned Judge is right in holding that the deposition of the complainant and other witnesses, who have come forward to support the complainant do not inspire any confidence as the evidence is not found to be trustworthy and therefore, discarded the same.

6. The learned advocate for the petitioner did not invite attention of the Court to the cross examination of

the doctor, who had examined the complainant on 25th December 1999. The witness was working as Medical Officer at Community Health Centre, Umrala. The complainant-Harjibhai Dharmshibhai was sent with Police Yadi from Umrala PSO. The Medical Officer has deposed that a person, who is injured normally mentions the name of the person, who has assaulted him. The witness has stated that, **"I did ask the name, but he (complainant) did not give".** Besides, the Medical Officer has opined that nature of the injury is such that it can be caused with the help of some other person as it is on the back of the complainant. The learned advocate appearing for the petitioner conveniently did not focus his attention to the deposition of Hasamkhan, PW 9, Exh.25, also who was working as PSO at Umrala Police Station on the day of the incident, i.e. 25th December 1999. Para 2 of the deposition is very important which discloses the ill design of the complainant. He has deposed that,

> "It is true that in this case for taking the complaint of the complainant, one Borichabhai possessing Petrol Pump at Umrala has telephoned him. Said Borichabhai is a social worker. Before telephone call from Borichabhai was

> received, the complainant had come to Umrala Police Station with a written application. As per that written application, no offence under the Atrocities Act was made out. Therefore, complainant had taken away the said application and had come with another application and as per that application the case was registered. I had read the first application. In that application except stoning no other details were mentioned. In the first application whether allegations with name were mentioned or not, I do not remember at this stage."

On the basis of the deposition of PSO, the learned Judge has observed in the latter part of para 8 that in cross examination of Arjanbhai (PSI), PW 10, exh.28 that Sarpanch of Village Chogath had requested the DSP, Bhavnagar by submitting an application to inquire into the matter as according to him the complaint was false. The President of the Gram Panchayat, Umrala, one Hirabhai T. Parmar had also given an application to DSP to inquire into the matter as according to him also, the complaint was false. The village people of Chogath village have also complained and stated that after the

complaint, the complainant's brother, Vinubhai's wife Rekhaben had filed a complaint under section 110 of the Bombay Police Act against one Rasikbhai Manubhai and others of village Chogath. In the said complaint filed by the wife of the brother of the complainant a report to the effect that the complaint was false is made in the concerned court.

The learned Judge after recording the aforesaid facts observed that,

> “From the aforesaid facts even assuming for a while that in the matter of kerosene if there was some exchange of words, the present complaint is filed only with a view to keep the village people under pressure as these village people had earlier complained about non receipt of supply. This possibility cannot be ruled out.”

7. Mr.Keshwani, the learned advocate for the petitioner relied upon the decision of the Hon'ble the Apex Court in the matters of (i) **Leela Ram (D) through Duli Chand Vs. State of Haryana and another**, reported in A.I.R. 1999 SC 3717; (ii) **Krishnan and another Vs. Krishnaveni and another** reported in (1997) 4 SCC 241; (iii) **Gubbala**

Venugopalaswamy and others Vs. State of Andhra Pradesh, reported in 2004 Criminal Law Journal 2557; (iv) **Chaudhari Ramjibhai Narasangbhai Vs. State of Gujarat and others**, reported in (2004) 1 SCC 184, to contend that the learned Judge has erred in not following the well settled principles of law. The learned advocate tried to convince this Court that even if the witness is related one, his testimony cannot be discarded on that ground. He submitted that in a criminal trial, what is important is the quality of evidence and not the number of witnesses. These principles are not only well established but well accepted also. But then the learned advocate should demonstrate as to how these principles are violated in the present case. The learned advocate could not convince this Court that these principles are violated in the present case. Hence the decisions of the Hon'ble the Apex court do not help the petitioner.

8. In view of the aforesaid discussion the present revision application is dismissed having found no substance. No ground is made out to interfere with the judgement and order passed by the learned Special Judge (Atrocity) and Fast Track Court No.5, Bhavnagar in

Special Case (Atrocity) No.24 of 2000 dated 5th April 2000. Rule is discharged. No order as to cost.

9. At this juncture, Mr.Keshwani, the learned advocate for the petitioner submitted that it is not his case that, 'the investigation was carried out by an unauthorised officer'. He submitted that he was only inviting the attention of the Court to the fact that the learned Judge has discarded the evidence of the Police officer on the ground that it was the evidence of a Police Officer who was not authorised to carry out the investigation in the matter. The learned advocate could not explain as to what does he want to convey by this submission. As discussed hereinabove, it was the Deputy Superintendent of Police, who was assigned the investigation and it was he who carried out the same by rushing to the scene of occurrence on the same day. He acted in the matter with utmost promptness. Therefore, submission of Mr.Keshwani need not detain this Court particularly, when he is not able to convey the purpose of making this submission.

(RAVI R. TRIPATHI, J.)

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